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10/821,364	04/09/2004	Delbert P. Keisling JR.	COM 1051-028	1200
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STANDLEY LAW GROUP LLP			EPPES, BRYAN L	
495 METRO PLACE SOUTH				
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DUBLIN, OH 43017				
			ART UNIT	PAPER NUMBER
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			11/23/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/821,364

Applicant(s)

KEISLING, DELBERT P.

Examiner

Bryan Eppes

Art Unit

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 August 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7-17, 19-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16, 17 and 19-23 is/are allowed.
- 6) ☒ Claim(s) 1-5 and 7-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

This office action is in response to the amendment filed 8/14/2007. Claims 1-5, 7-17, and 19-23 are pending. Claims 6 and 18 have been canceled. Claims 21-23 have been added.

Drawings

1. The drawing objection is mooted by cancellation of claim 6.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-2, 4, 7-12, and 14-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Tisbo et al. (U.S. Patent Number 5,372,415).

- a. Regarding claim 1, Tisbo discloses, with reference to Fig. 2, a frame consisting essentially of side panels 18 and 24 with top panel 20 and bottom panel 26, where the longitudinal edge defines a "tongue" shown as any one of, or all of 90. In this case, the upper and lower horizontal edge portion of 28 from the outer most points to the door 12 opening will be construed as "frame." The "tongue" is further detailed in Fig. 5 being a close-up cross-sectional view. Tisbo discloses the vertical edges of 28 as a jamb 16 wherein the jamb includes a first prong 116 and second prong 112 and a base portion 122 disclosed in Fig. 4, a cross-sectional view of the jamb 16 (See column 6 line 24). Tisbo, with reference

to Fig. 6, discloses the "tongue" 126 situated between first prong 116 and second prong 112 of the "jamb."

The language "for" and "adapted to/for" is functional language that limits the claim only in that the prior art be capable of performing in such a manner. In this case, the frame is being used with a door opening and a base 122 is capable of being connected to a wall, albeit through the unit as a whole.

Furthermore, the recitation "having more than one door opening and wall portions" is not limiting since the claim is drawn to a structure and the preamble merely describes where the structure is to be used.

- b. Regarding claim 2, Tisbo discloses the frame and jamb comprised of plastic (See column 1 line 7).
- c. Regarding claim 4, with reference to Fig. 6, Tisbo discloses an angled edge 130 on the frame and an angled edge 120 on the first prong of the jamb.
- d. Regarding claim 6: Canceled
- e. Regarding claim 7, with reference to Fig. 6, Tisbo discloses the tongue of the frame interlocked with the jamb.
- f. Regarding claim 8, the jamb 16 of Fig. 2 and Fig. 4 as disclosed in Tisbo forms an outlining structure considered to meet the broad limitation of a "profile."
- g. Regarding claim 9, in Fig. 2 Tisbo discloses a jamb 16 on both vertical sides of the door panel 12. Each jamb connects to a corresponding side panel 18 or 24.

h. Regarding claim 10, in Fig. 2 Tisbo discloses a bottom panel 26 with an edge portion defining a tongue 98. The tongue 98 is further detailed in Fig. 5 (See column 5 line 49). Fig. 6 discloses the tongue portion 98, specifically reference 126, situated in a groove (the space between prong 116 and second prong 112) on the bottom edge of the frame (See column 6 line 4 describing the relationship between Fig. 8 reference numeral 160 and Fig. 4).

i. Regarding claim 11, Tisbo discloses a groove (Fig. 6 the space between prong 116 and second prong 112) on the bottom edge of the frame (See column 6 line 4 describing the relationship between Fig. 8 reference numeral 160 and Fig. 4). In Fig. 2 Tisbo discloses a bottom panel 26 with an edge portion defining a tongue 98. The tongue 98 is further detailed in Fig. 5 (See column 5 line 49). Fig. 6 discloses the tongue portion 98, specifically reference 126, situated in a groove (the space between prong 116 and second prong 112) on the bottom edge of the frame.

As described in claim 1, the preamble is non-limiting and the language "adapted to fit with" and "for" are both limiting in as much as the prior art need only be capable of performing in such a manner.

j. Regarding claim 12, Tisbo discloses the bottom panel 26 comprised of plastic (See column 1 line 7).

k. Regarding claim 14, in Fig. 2 Tisbo discloses a bottom panel 26 with an edge portion defining a tongue 98 wherein the tongue 98, further detailed in Fig. 5 (See column 5 line 49), has an angled edge portion 130. Tisbo also discloses

the bottom edge of the frame having an angled edge 120. The angled edge of the bottom panel and angled edge of the frame engage each other as depicted in Fig. 6 (See column 5 line 58).

I. Regarding claim 15, Tisbo discloses, with reference to Fig. 6, the tongue of the bottom panel interlocked with the frame.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 3,5, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tisbo et al. (U.S. Patent Number 5,372,415) in view of Keisling et al. (U.S. Patent Number 5,564,806).

m. Regarding claim 3, Tisbo teaches the limitations of claim 1 as described previously, except the specific use of high-density polyethylene (HDPE) and polyvinyl chloride (PVC). Keisling teaches the panels of a locker made of HDPE where "the connectors, including the hinges, protrusions and mating connectors may all be made of a material such as polyvinyl chloride (See column 3 line 38). It is well known in the art that HDPE has stronger intermolecular forces, higher tensile strength, and can withstand higher temperatures over lower density polyethylene. Also, it is well known in the art that PVC is relatively inexpensive to

manufacture and is often used for its flexibility. Given these properties, it would have been obvious, at the time the invention was made, to one of ordinary skill in the art to construct the frame out of HDPE and the jamb out of PVC.

n. Regarding claim 5, Tisbo teaches the limitations of claim 1 except where the angled edge portion of the frame is a groove instead of a protrusion. While both an angled protrusion and angled groove are required in this embodiment of a fastening device, it is immaterial as to which structure is the male or female structure. Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the angled edge portion of the frame as a groove, since it has been held that mere reversal of the essential working parts of a device involves only routine skill in the art. *In re Einstein*, 8 USPQ 167.

o. Regarding claim 13, Tisbo teaches the limitations of claim 11 except the specific use of high-density polyethylene (HDPE) for the frame and bottom panel. Keisling teaches the "top, bottom, side, rear, and front panels of each locker of the present invention are preferably made of a polyolefin material, such as high density polyethylene," (See column 3 line 38). It is well known in the art that HDPE has stronger intermolecular forces, higher tensile strength, and can withstand higher temperatures over lower density polyethylene. Given these properties, it would have been obvious, at the time the invention was made, to one of ordinary skill in the art to construct the bottom panel out of HDPE.

Allowable Subject Matter

4. Regarding claim 18: Canceled
5. Claims 16, 17, 19, 20 allowed.
6. New claims 21-23 allowed.

Response to Arguments

Applicant's arguments filed 8/14/07 have been fully considered but they are not persuasive.

7. In response to applicant's arguments that the assembly must be used with an existing locker having more than one door, the recitation "for an existing locker assembly having more than one door opening" in claims 1 and 11 has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).
8. In response to applicant's argument that Tisbo '415 does not show a bottom panel tongue in a groove of a bottom portion of a frame, examiner interprets Tisbo '415 as meeting the limitation as outlined in claim 11 above.

Conclusion

9. In response to applicants amended claim 1 and 11, the amendments do not warrant sufficient claim limitations rendering them allowable over prior art. Therefore, any depending claims stand as rejected.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryan Eppes whose telephone number is (571) 270-3109. The examiner can normally be reached on M-F; alt. Fri. off (7:30am-5pm EST.).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Canfield can be reached on (571) 272-6840. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

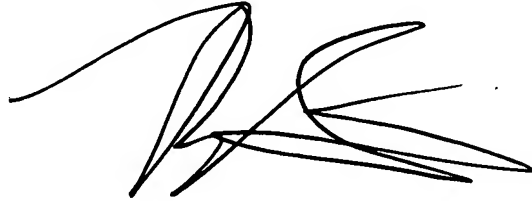
Application/Control Number:
10/821,364
Art Unit: 3635

Page 9

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Robert Canfield
Primary Patent Examiner
Art Unit 3635

BE
11/14/2007

A handwritten signature in black ink, appearing to be 'RC', with a long horizontal line extending to the left.